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Attorney for Plaintiffs

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF OREGON

11 JEFFREY FEHR and)
12 AUDREY FEHR)

13 Plaintiffs,)

14 v.)

15 JOHN KENNEDY,)

16 Defendant.)

Case No.:

CV'08 - 1 102 KI

COMPLAINT
(Legal Malpractice)

17 Plaintiffs allege:

18 **NATURE OF THE ACTION**

19 1.

20 This is a diversity action for damages suffered by Jeffrey Fehr and Audrey Fehr as a
21 result of legal malpractice by Defendant John Kennedy.
22

23 **PARTIES**

24 2.

25 Plaintiff Jeffrey Fehr and Audrey Fehr are citizens of the state of Arizona and reside in
26 Arizona.

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3.

Defendant John Kennedy is a citizen of, and practices law in, the state of Oregon.

JURISDICTION

4.

28 U.S.C. § 1332 grants the United States District Court original jurisdiction in civil actions between citizens of different states, where, as here, the amount in controversy exceeds \$75,000.00.

VENUE

5.

Pursuant to 28 U.S.C. § 1391, venue is appropriate in Oregon because all events giving rise to the claims occurred in Oregon.

FACTS

6.

Jeffrey Fehr and Audrey Fehr hired John Kennedy as their attorney in a lawsuit brought by their former employer Advanced Seismic Hardware, LLC. ("ASH")

7.

ASH alleged that Jeffrey Fehr had breached his fiduciary duty to ASH and committed fraud. They further alleged that Audrey Fehr was liable for damages because she participated and assisted in the breach of fiduciary duties.

8.

Defendant Kennedy represented to the Fehr's that he had the skill and experience to defend Jeffrey Fehr and Audrey Fehr against ASH's allegations.

9.

Defendant Kennedy represented Jeffrey Fehr and Audrey Fehr through all phases of the trial including discovery, settlement conference, trial and on appeal.

10.

Defendant Kennedy's representation failed to meet the established standards of an attorney in the state of Oregon.

11.

If Defendant Kennedy had met the established standard of care the outcome of the lawsuit would have been different.

12.

Specifically, at the settlement conference Defendant Kennedy failed to assess and advise Jeffrey Fehr and Audrey Fehr of the risk of going to trial.

13.

Defendant Kennedy specifically discounted and contradicted the mediator's assessment of the likelihood of success of ASH's claims and the consequences of a loss at trial.

14.

Defendant Kennedy's failure to adequately assess and advise regarding the risk of loss caused the Fehrs to reject an offer to settle the case which was a much more favorable result than that was achieved at trial.

15.

As a direct result of Defendant Kennedy's failure to assess and advise Jeffrey Fehr and Audrey Fehr of the risk of proceeding to trial, the case went to trial and Jeffrey and Audrey Fehr

1 were found liable for damages in the amount of \$364,503.00 plus attorney fees for ASH's trial
2 attorneys.

3 16.

4 Following the trial, Defendant Kennedy agreed to pursue an appeal from the trial on
5 behalf of Jeffrey and Audrey Fehr.

6 17.

7 Defendant Kennedy guaranteed success on the appeal, based on his experience as a clerk
8 for the appellate courts in the State of Oregon.
9

10 18.

11 Based on Defendant Kennedy's promise to obtain a successful result on the appeal,
12 Plaintiff's Audrey Fehr and Jeffrey Fehr dismissed a case against Ed Westendahl.

13 19.

14 Based on Defendant Kennedy's promise to obtain a successful result on appeal,
15 Jeffrey Fehr and Audrey Fehr allowed their house to be foreclosed on, and relinquished a
16 business.
17

18 20.

19 Defendant Kennedy failed to file a Notice of Appeal on behalf of Jeffrey and Audrey
20 Fehr. Defendant Kennedy's failure to file an appeal allowed the adverse judgment against
21 Audrey Fehr and Jeffrey Fehr to become final.
22

23 21.

24 Defendant Kennedy's failure to file an appeal failed to meet the standards of care of an
25 attorney in the State of Oregon.
26

22.

As a direct result of Defendant Kennedy's failure properly assess and advise the Fehr's regarding the likelihood of success at trial and his failure to file the Notice of Appeal and perform on his promise to prevail, Jeffrey Fehr and Audrey Fehr have suffered economic damages of \$2,000,000.00. Additionally, Jeffrey Fehr has suffered non-economic damages of \$750,000.00 and Audrey Fehr has suffered non-economic damages of \$200,000.00.

23.

Plaintiffs request a jury trial.

WHEREFORE Plaintiffs pray for judgment as follows:

1. NEGLIGENCE

A. Jeffrey Fehr

i: Economic Damages: \$2,000,000.00

ii: Non-Economic Damages: \$750,000.00

iii: Reasonable Costs incurred herein.

B. Audrey Fehr

i: Economic Damages: \$2,000,000.00

ii: Non-Economic Damages: \$200,000.00

iii: Reasonable Costs incurred herein.

DATED this 22 day of September 2008.

Respectfully Submitted,

HOLLANDER, LEBENBAUM & GANNICOTT



Philip M. Lebenbaum. OSB #86062

Attorney for Plaintiffs